

1 Bruce Weiner, Esq.
2 Rosenberg, Musso & Weiner
3 26 Court Street, Suite 2211
4 Brooklyn, New York 11242-1125
5 Telephone No.: (718) 855-6840
6 Facsimile No.: (718) 625-1966

7 **UNITED STATES BANKRUPTCY COURT**
8 **SOUTHERN DISTRICT OF NEW YORK**

9
10 In re:

11
12 RESIDENTIAL CAPITAL, LLC, et al.,
13 Debtors
14

Case No. 12-12020

Chapter 11

RESPONSE AND OBJECTIONS OF
CREDITOR ALBERT PASSARETTI
TO DEBTORS' OBJECTION TO
CLAIM

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16 RESPONSE AND OBJECTIONS OF CREDITOR
17 ALBERT PASSARETTI TO DEBTORS' OBJECTION TO CLAIM
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1 TO THE HONORABLE MARTIN GLENN
2 UNITED STATES BANKRUPTCY JUDGE

3 Albert Passaretti ("Passaretti") submits this response to the Debtors'
4 Objection to Proof of Claim No. 5605 (the "Objection") Docket No. 5162.
5 For his Response and Objections Passaretti states as follows:
6

7 ISSUES PRESENTED IN THIS RESPONSE AND OBJECTION
8 FOR COURT RULING
9

10 I. Debtors' Objection to Passaretti's Claim should be denied and his
11 Claim should be allowed on the grounds that Debtors' have not provided
12 evidence supporting Debtors' Objection.

13 II. Debtors should be compelled to produce documentary evidence
14 that supports GMACM's assertion that the underlying loan was assigned to
15 GMAC before GMACM conducted the non-judicial foreclosure sale of the
16 property in as much as the loan was an asset of the Lehman Brothers'
17 Bankruptcy Case, and could not have been removed or assigned from the
18 Lehman Brothers' Bankruptcy Estate, as such would be a violation of
19 bankruptcy law.

20 III. Debtors should be compelled to specifically state under oath the
21 source of authority that allowed GMACM to siphon off the loan underlying
22 the subject real property from Lehman Brothers' Bankruptcy Estate during
23 the pendency of Lehman Brothers' Bankruptcy??
24

25 Following below, Passaretti will emphasize the specific issues of the
26 within this Response and Objection to Debtors' Objections to Proof of Claim,
27 and, in this Creditor's opinion, more significantly, and more importantly,
28 what the issues are not.

PRELIMINARY STATEMENT

1
2
3 1. Passaretti's proof of claim #5605 (the "Proof of Claim") filed
4 prior to the applicable extended deadline, asserts claims against GMACM
5 Mortgage, LLC ("GMACM") arising from an action filed pursuant to California
6 State Law in the Superior Court of California, For the County of Los Angeles
7 dismissed by a motion for summary judgment and appealed to the
8 California Court of Appeal, Los Angeles County, Second Appellate
9 Department, and stayed as a result of Debtors' Chapter 11 Bankruptcy (the
10 "State Action"). GMACM's motion for summary judgment was set for
11 hearing in the Los Angeles Superior Court on April 14, 2011, and shortly
12 before that hearing, Passaretti first learned that GMACM was not the owner
13 of the underlying loan and that the loan was owned by Lehman Brothers.
14 Passaretti immediately propounded and served discovery consisting of 16
15 special interrogatories and requests for production of documents on GMACM
16 to determine the basis of GMACM's assertion the it was the 'foreclosing
17 beneficiary' as recited in the Trustee's Deed Upon Sale; Passaretti's ex
18 parte motion for an order shortening time on his motion for an order
19 compelling GMACM's further response to request for production of
20 documents and special interrogatories demonstrating that GMACM owned
21 the note was denied, and by implication, his implicit request to continue the
22 hearing on the motion for summary judgment was also implicitly denied.

23 2. If Passaretti's Appeal were not stayed by the Debtors' chapter
24 11 bankruptcy the trial court's decision would have been reversed and,
25 Passaretti would have moved the court to amend his Complaint to revive
26 claims that were prevented from going forward by the trial court's
27 erroneously sustaining GMACM's demurrers; Passaretti would also have
28 included additional causes of action to his amended Complaint, alleging the

1 absence of legal authorization giving GMACM the right to remove an asset,
2 the note, from the Lehman Brothers' Bankruptcy Estate and allowing
3 GMACM the privilege of being able to foreclose on a property that it did not
4 own, there is no authority to justify GMACM's removal of the note, and later
5 the foreclosed real property, from the Lehman Brother's Bankruptcy Estate.

6 3. Contrary to GMACM's assertion that Passaretti's claim is meritless,
7 it is overwhelmingly ironic that GMACM relies on the off-site books records
8 of MERS to establish a paperless trail of loan ownership, but, when faced
9 with hard questions, GMACM relies on its 'books and records', albeit
10 imaginary, to deny borrowers' claims. Debtors' Objection fails to offer
11 competent evidence in rebuttal to the substance of Passaretti's proof of
12 claim.

13 4. Passaretti leaves to the discretion of the Court the efficacy to
14 resolve this dispute, by ordering GMACM to produce discovery set forth
15 below in a non-evasive, straight forward, manner.

16
17 FACTUAL BACKGROUND
18

19 5. Passaretti named GMACM and EXECUTIVE TRUSTEE SERVICES,
20 LLC, ("ETS") its wholly owned subsidiary, in his Complaint.

21 6. Passaretti's Complaint arises out of a residential mortgage loan
22 transaction whereby Passaretti purchased a single family dwelling on or
23 about August 25, 2006, whose common location is known as 1609 256th
24 Street, Harbor City, CA 90710, (the "subject property"). The specific facts
25 regarding the GMAC loan, and the real property, at issue are as follows: 1)
26 GMAC Loan Number: 030 771 7484; 2) Property Address: 1609 256th
27 Street, Harbor City, CA 90710 (although the Trust Deed identifies the
28 address as located at a fictitious location in "Lomita, California" and not the

1 actual location which is Harbor City, California); 3) Loan Amount:
2 \$620,000; 4) Date of Original loan: August 25, 2006; 5) Monthly
3 payment: \$2,310.98 per month (variable interest rate); and 6) Type of
4 Loan: adjustable rate mortgage, which is commonly known as an "Option
5 ARM" because it allows the borrower to elect any one of three different
6 monthly payment amounts.

7 7. Passaretti did not receive actual notice of the May 22, 2009, non-
8 judicial trustee foreclosure sale from either GMAC Mortgage or from ETS.
9 No actual notice of the Notice of Sale was received by Passaretti with
10 respect to the non-judicial trustee's foreclosure sale, which purportedly
11 occurred on May 22, 2009. Failure to give actual notice is further
12 supported by virtue of the facts that (a) the actual Trust Deed with respect
13 to the real property at issue sets forth a wrong property address in its
14 property description on five (5) separate occasions, (b) the address of the
15 property listed on the Notice of Default and Notice of Sale mimics the wrong
16 address set forth in the Trust Deed, and (c) the correct address of the real
17 property never appears in the Trust Deed or any other loan documents. It
18 appears almost all of GMACM's reference and correspondence to the real
19 property identified the wrong property, in the wrong city, with the wrong zip
20 code. Passaretti challenged and objects to the non-judicial foreclosure sale
21 by virtue of lack of due process, lack of actual notice, lack of proper notice
22 and lack of reasonable notice, and GMACM's failure to fulfill and perform its
23 promises to Passaretti.

24 8. ETS's non-judicial limited Trustee Sales Officer in this matter is
25 identified as Max. A. Garcia, and others, employees of ETS. ETS, through
26 its employees, managers, and officers, repeatedly identified, and allegedly
27 sent, its various notices to the following wrongful address which does not
28 exist and has never existed, namely: 1609 256th Street, Lomita, CA 90717.

1 The Lomita address is wrong in the following ways: 1) wrong city; 2)
2 wrong zip code; 3) this property address does not exist; 4) this property
3 address has never existed; 5) Passaretti never received actual notice of
4 the Notice of Default or the Notice of Sale prior to the May 22, 2009, non-
5 judicial trustee foreclosure sale of the subject real property; 6) Never
6 within the entire Trust Deed is the property correctly identified with respect
7 to the common address of the real property. Instead, the wrong address is
8 found in the Trust Deed on at least five (5) separate occasions on pages 2,
9 4, 18, 19 and 24.

10 9. Whereas, the true and correct address of the property at issue is:
11 1609 256th Street, Harbor City, CA 90710.

12 10. Passaretti's Complaint requested that the non-judicial trustee
13 sale conducted on or about May 22, 2009, be set-aside, vacated and
14 reversed consistent with justice, fair play, principles of due process and
15 actual and reasonable notice.

16 11. Passaretti challenges and disputes the May 22, 2009, non-
17 judicial trustee sale based upon his actual payment of four (4) substantial
18 cashier's checks, namely: 1) Cashier's check in the sum of \$20,365 dated
19 7/17/2007; 2) Cashier's check in the sum of \$23,632 dated 4/28/2008;
20 and, 3) Two Cashier's checks through Western Union each in the amount of
21 \$5,000 dated 1/20/2009 and 1/21/2009, respectively.

22 12. The basis for these four (4) check payments whose total exceeds
23 \$54,000 were promises and representations made by GMACM to Passaretti
24 that: GMACM would offer Passaretti a loan modification agreement and that
25 GMACM would not proceed with a foreclosure sale. Passaretti was ignorant
26 of the truth of this representation as evidenced by his payment of \$33,632
27 to GMACM; that GMACM intended Passaretti to rely and act upon GMACM's
28 representations, and Passaretti was induced to act upon GMACM's

1 representations and Passaretti did so act and rely and there to his
2 substantial detriment. GMACM agreed that it would modify the subject
3 loan and not conduct any foreclosure proceedings. GMACM failed to honor
4 its promises and representations to Passaretti to and modify the home loan
5 at issue and not to conduct a foreclosure sale. Then, at the instruction of
6 GMACM, ETS conducted a non-judicial foreclosure sale of the subject
7 property (while Passaretti remained ignorant of the fore the foreclosure sale
8 until after May 22, 2009, i.e. after the foreclosure sale of Passaretti's home)
9 and the property reverted to GMACM¹.

10 13. Correspondence and communications between Passaretti and
11 GMACM representatives support the application of promissory estoppel,
12 namely: (1) that GMACM promised and represented to Passaretti that in
13 exchange for the single sum payment of \$23,632 per check # 419903927
14 on April 28, 2008, and another payment of \$10,000 per Western Union
15 payment on January 20-21, 2009, GMACM would offer a loan modification
16 to Passaretti and would not conduct a foreclosure sale of the subject
17 property, (2) that GMACM made these promises and representations to
18 offer a loan modification to Passaretti and to not conduct a foreclosure sale
19 of the property, (3) that Passaretti was ignorant of the true facts, (4) that
20 GMACM intended Passaretti to rely upon GMACM's promises and
21 representations, (5) that Passaretti was induced to and did act upon
22 GMACM's representations by virtue of making payments of \$23,632 and
23 then \$10,000 directly to GMACM. Additionally, GMAC/ETS sold Plaintiff's
24 real property on or about May 22, 2009, notwithstanding: (1) the "auction"
25 sales price of \$374,400; (2) the "auction" was not a true, public auction
26 open to all bidders; (3) the loan balance was approximately \$620,000 (and
27

28 ¹ After the Complaint was filed, Passaretti learned that GMACM was not and is not the
beneficiary of the note.

1 \$729,760 according to GMACM); (4) Passaretti was continuing to make
2 payments on the loan; (5) Passaretti paid GMAC \$54,000 in cashiers check
3 payments which Passaretti would not have paid in the absence of GMACM's
4 representations that GMACM would modify the loan.

5 14. Passaretti alleges GMACM violated *California Civil Code* §§2924c
6 et seq. , et al. which expressly protect property owners with respect to
7 requirements of due process relating to Notice of Default and Notice of Sale.

8 15. Passaretti alleges violation of *California Civil Code* §2924c which
9 requires GMACM to provide Passaretti with an accurate Statement and
10 status of his loan. GMACM failed to comply with this provision. In this
11 case, the original loan principal amount was \$620,000. Through an
12 unknown mechanism, and not explainable by the variable interest rate
13 ("ARM") loan, GMACM increased the loan principal to \$729,760 – a
14 staggering \$109,760 without explanation. Passaretti repeatedly requested,
15 in writing, an explanation of the \$109,760 increase. GMACM failed to
16 comply.

17 16. GMACM's loan practices, as applied to Passaretti, were arbitrary,
18 capricious and confusing. In February 2009 GMACM accepted Passaretti's
19 mortgage payment in the sum of \$2,310 after accepting Passaretti's
20 \$10,000 Western Union payment on or about January 20th and 21st , 2009.
21 However, one month later in March 2009 GMACM fully rejected the identical
22 payment from Passaretti.

23 17. GMACM unfairly and unlawfully increased his monthly payments
24 from \$2,310 per month to \$5,346 per month. In other words, GMACM
25 raised its monthly mortgage amount by over 230% in a single month.
26 GMACM's failure to justify such a huge payment increase, without a detailed
27 accounting analysis and confirmation, despite Plaintiff's request for such an
28 explanation, is a breach of GMACM's duties to Passaretti.

1 18. GMACM allegedly sent Passaretti correspondence which was
2 never received by Passaretti prior to 5/22/2009 sale date which
3 demonstrates GMACM's fundamental false and inaccurate information with
4 respect to the status and condition of Passaretti's loan.

5 19. Passaretti was shocked to learn that his Harbor City real property
6 had been sold on or about May 22, 2009, in light of three factors: (1)
7 because all of the elements of promissory estoppel set forth above are
8 present, (2) Passaretti was not given actual knowledge of the May 22, 2009
9 non-judicial foreclosure sale and (3) Passaretti reasonably believed that
10 GMACM, would not proceed with foreclosure proceedings and would offer
11 Passaretti a loan modification.

12 20. GMACM represented to Passaretti that GMACM would offer
13 Passaretti a loan modification and would not proceed with foreclosure
14 proceedings; GMACM made its representations to Passaretti with knowledge
15 that said representation were false; that Passaretti was ignorant of the
16 falsity of GMACM's representations; that Passaretti was induced to act upon
17 GMACM's representations by making direct payments to GMACM in the sum
18 of \$23,632 and \$10,000 on 4/28/2008 and 1/20/2009, respectively.

19 21. In this instance, without due notice, Passaretti was unable to
20 properly reply to GMACM because Passaretti was ignorant of GMACM's
21 concealed intent, and action, to take back the Harbor City property through
22 a Notice of Default, Notice of Sale and a purported non-judicial foreclosure
23 sale.

24 22. Passaretti believed that GMACM's representations to offer a loan
25 modification and that said representations were the basis for him to send
26 the cashier's checks to GMACM.

27 23. Heightened Scrutiny of Non-Judicial Foreclosure Much Greater
28 Than For Judicial Foreclosure in California: By virtue of the fact that no

1 judge oversees the process, and the fairness, of a non-judicial foreclosure,
2 it is well-settled California law, and set forth in California statutes at
3 *California Civil Code* §§2920 to 2944.7. More specifically, *California Civil*
4 *Code* §2924 (and other related sections) sets forth very precisely the
5 technical requirement that: "a statement setting forth the nature of each
6 breach actually known to the beneficiary and of his or her election to sell or
7 cause to be sold the property to satisfy that obligation ..." Here, in this
8 matter, GMACM patently failed to comply with the reasonable notice
9 provision set forth in the *California Civil Code* §2924, et seq

10 24. GMACM had a legal obligation pursuant to *Civil Code* §2924c to
11 provide an accurate Statement to Passaretti with respect to the status of his
12 mortgage. Passaretti alleges that GMACM failed to provide him with an
13 accurate Statement with respect to his loan.

14 25. Passaretti was requesting from GMACM either a Reinstatement
15 or a Pay-Off Statement in order to cure any alleged default. Passaretti's
16 right and opportunity to cure was never provided to him. Passaretti's right
17 and opportunity to cure is a fundamental right protected by the *California*
18 *Civil Code* §2924, et seq., and was violated with respect to the specific
19 facts, circumstances and omissions which occurred in this matter.

20 26. The trustee's sale circumstances described above are wrongful
21 and unfair. A property owner should and do have a legal right to notice
22 with respect to the taking of his property resulting in a change of
23 ownership.

24
25 GMACM SHOULD BE ORDERED TO RESPOND TO
26 PASSARETTI'S SPECIAL INTERROGATORIES AND
27 REQUESTS FOR PRODUCTION OF DOCUMENTS
28

1 27. Passaretti propounded and served the Special Interrogatories
2 and Requests for Production of Documents in the State Action which the
3 State Court Trial Court failed to order GMACM's further response. This
4 discovery, if responded to in a straight forward manner as required by
5 California law would go a long way in resolving the disputed foreclosure sale
6 and the Passaretti's Objections to GMACM's Objections to the Claim which
7 are at issue herein.

8 28. Passaretti's motion for further response to requests for
9 production of documents included request numbers 3, 4, 5, 6 7, 9, 13, and
10 14. GMACM's Response/Objection only to Request No. 3 is set forth
11 verbatim herein, as its response to all other requests repeats the same
12 response/objections, Passaretti's Factual and Legal Reason's for Compelling
13 GMACM's Further Response to No. 3 is included as his argument is repeated
14 as to the other requests for production that was the subject of Passaretti's
15 motion to compel GMACM's further response to requests for production of
16 documents.

17
18 **Requests for Production of Documents Which Were Propounded in**
19 **the State Court Action, and Which GMACM Refused to Answer, Nos.**
20 **3, 4, 5, 6, 7, 9, 13, and 14**

21
22 **Passaretti's Request for Documents No. 3:**

23 Each and every document which constitutes or evidences the
24 assignment and/or transfer of each and every interest in the
25 promissory note and trust deed dated August 25, 2006, executed by
26 Albert A. Passaretti, Jr. as trustor in favor of GreenPoint Mortgage
27 Funding, Inc., as beneficiary, recorded on September 1, 2006 in the
28 Office of the Los Angeles County Recorder as instrument no. 06
1954544.

1 GMAC's Response to Request for Documents No. 3:

2 GMACM objects to this request on the grounds that it is vague
3 and ambiguous. GMACM objects to this request on the grounds that it
4 is overly broad and unduly burdensome. GMACM further objects to
5 this request to the extent that it seeks information protected by the
6 attorney-client privilege. GMACM objects to this request to the extent
7 it seeks trade secret, private and/or sensitive or confidential
8 information. GMACM objects that this request is wholly irrelevant to
9 the subject action, not reasonably calculated to lead to the discovery
10 of admissible evidence, harassing, and improper. Passaretti has
11 alleged a single claim against GMACM in the instant action - for
12 promissory estoppel. The "the date and title of each and every
13 document which constitutes or evidences the assignment and/or
14 transfer of each and every interest in the promissory note and trust
15 deed dated August 25, 2006, executed by Albert A. Passaretti, Jr. as
16 trustor in favor of GreenPoint Mortgage Funding, Inc., as beneficiary,
17 recorded on September 1, 2006 in the Office of the Los Angeles
18 County Recorder as instrument no. 06 1954544" is wholly irrelevant
19 to Plaintiff's sole remaining claim.
20

21 Passaretti's Factual and Legal Reasons made in the State Court Action
22 for Compelling GMACM'S Further Response.

23 The comprehensive statutory framework for the regulation of
24 nonjudicial foreclosure sales pursuant to the power of sale contained
25 in a deed of trust is intended to ensure that property (sic) conducted
26 sale is final between the parties and conclusive as to a bonafide
27 purchaser. *Civil Code Section 2924*. However, the presumptive
28 validity of the foreclosure sale presupposes that the sale was
conducted properly; GMAC's assertion that it was the foreclosing

1 beneficiary when in fact it was not, does not support the presumption
2 that the sale was "properly conducted."

3 Each of defendant GMAC's objections to the following eight (8)
4 requests for documents are identical and are repeated after each
5 request for documents. GMAC is refusing to produce documents by
6 asserting that the court has sustained the demurrer to the complaint
7 and first and second amended complaint and therefore there are no
8 longer any issues dealing with MERS or wrongful foreclosure.

9 As stated above, these interrogatories do not challenge the
10 efficacy of MERS; plaintiff is not challenging MERS' compliance with
11 foreclosure law; plaintiff is asserting that there was no transfer of any
12 interest in the note or trust deed to GMAC; the documentation and
13 correspondence with MERS is incidental to GMAC's lack of beneficial
14 interest in the note.

15 GreenPoint Mortgage was the beneficiary under the original note
16 and trust deed; there is no documentation produced that shows GMAC
17 is the beneficiary, except the trustee's deed upon sale. There is
18 however, a long history of GMAC's claiming that it was the loan
19 servicing agent and only the loan servicing agent; and, the evidence
20 indicates that the actual holder and beneficiary is a securitized
21 transaction administer by Lehman Brothers. How GMAC removed this
22 note and trustee deed from the insolvency court is essential to this
23 present action, and casts light on the authority and validity of the
24 representations made by defendant ETS and GMAC to Plaintiff.

25
26 Passaretti's Request for Documents No. 4:

27 Each and every document which constitutes or evidences the
28 assignment and/or transfer of each and every interest in the
promissory note and trust deed dated August 25, 2006, executed by

1 Albert A. Passaretti, Jr. as trustor in favor of GreenPoint Mortgage
2 Funding, Inc., as beneficiary, recorded on September 1, 2006 in the
3 Office of the Los Angeles County Recorder as instrument no. 06
4 1954544 from GreenPoint Mortgage Funding, Inc., to GMAC
5 Mortgage, LLC.

6
7 Passaretti's Request for Documents No. 5:

8 Each and every document which constitutes or evidences the
9 assignment and/or transfer of each and every interest in the
10 promissory note and trust deed dated August 25, 2006, executed by
11 Albert A. Passaretti, Jr. as trustor in favor of GreenPoint Mortgage
12 Funding, Inc., as beneficiary, recorded on September 1, 2006 in the
13 Office of the Los Angeles County Recorder as instrument no. 06
14 1954544 from September 1, 2006 to January 1, 2011.

15
16 Passaretti's Request for Documents No. 6:

17 Each and every assignment and/or transfer, in part or in whole,
18 of each and every interest the promissory note and trust deed dated
19 August 25, 2006, executed by Albert A. Passaretti, Jr. as trustor in
20 favor of GreenPoint Mortgage Funding, Inc., as beneficiary, recorded
21 on September 1, 2006 in the Office of the Los Angeles County
22 Recorder as instrument no. 06 1954544 from September 1, 2006 to
23 January 1, 2011.

24
25 Passaretti's Request for Documents No. 7:

26 Each and every document, or writing, that constitutes or
27 evidences GMAC, Mortgage LLC's authority to instruct, direct, or order
28 the trustee of the trust deed dated August 25, 2006, executed by
Albert A. Passaretti, Jr. as trustor in favor of GreenPoint Mortgage

1 Funding, Inc., as beneficiary, recorded on September 1, 2006 in the
2 Office of the Los Angeles County Recorder as instrument no. 06
3 1954544 to conduct the trustee's foreclosure sale pursuant to the said
4 trust deed.

5
6 Passaretti's Request for Documents No. 9:

7 Each and every document or writing, that constitutes or
8 evidences that Executive Trustee Services, LLC dba ETS Services was
9 substituted in as the trustee of the trust deed dated August 25, 2006,
10 executed by Albert A. Passaretti, Jr. as trustor in favor of GreenPoint
11 Mortgage Funding, Inc., as beneficiary, recorded on September 1,
12 2006 in the Office of the Los Angeles County Recorder as instrument
13 no. 06 1954544.

14
15 Passaretti's Request for Documents No. 13:

16 Each and every correspondence, document or writing sent by
17 GMAC Mortgage LLC to Mortgage Electronic Registration Systems, Inc.
18 which in any manner constitutes, evidences, relates to, or refers to
19 the promissory note and the trust deed dated August 25, 2006,
20 executed by Albert A. Passaretti, Jr. as trustor in favor of GreenPoint
21 Mortgage Funding, Inc., as beneficiary, recorded on September 1,
22 2006 in the Office of the Los Angeles County Recorder as instrument
23 no. 06 1954544.

24
25 Passaretti's Request for Documents No. 14:

26 Each and every correspondence, document or writing sent by
27 Mortgage Electronic Registration Systems, Inc. to GMAC Mortgage LLC
28 which in any manner constitutes, evidences, relates to, or refers to
the promissory note and the trust deed dated August 25, 2006,

1 executed by Albert A. Passaretti, Jr. as trustor in favor of GreenPoint
2 Mortgage Funding, Inc., as beneficiary, recorded on September 1,
3 2006 in the Office of the Los Angeles County Recorder as instrument
4 no. 06 1954544.
5

6 **Special Interrogatories Which Were Propounded by Passaretti in the**
7 **State Court Action and Which GMACM Refused to Answer, Nos. 3, 4,**
8 **5, 6, 7, 9, 13, and 14**
9

10 29. Passaretti's motion made in State Court for order compelling
11 GMACM's further response to special interrogatories included interrogatories
12 numbers 3, 4, 5, 6 7, 9, 13, and 14. GMACM's Response/Objection only to
13 Special Interrogatory No. 3 is set forth verbatim, as its response to the
14 other special interrogatories in substantial effect the same
15 response/objections except that the response/objection in some instances
16 includes a verbatim recital of the interrogatory in question, Passaretti's
17 Factual and Legal Reason's for Compelling GMACM's Further Response only
18 to No. 3 is included as his argument is repeated as to the other special
19 interrogatories that was the subject of Passaretti's motion to compel
20 GMACM's further response to special interrogatories.
21

22 **Passaretti's Special Interrogatory No. 3:**

23 State the date and title of each and every document which
24 constitutes or evidences the assignment and/or transfer of each and
25 every interest in the promissory note and trust deed dated August 25,
26 2006, executed by Albert A. Passaretti, Jr. as trustor in favor of
27 GreenPoint Mortgage Funding, Inc., as beneficiary, recorded on
28 September 1, 2006 in the Office of the Los Angeles County Recorder
as instrument no. 06 1954544.

1 GMAC's Response to Special Interrogatory No. 3:

2 GMACM objects to this interrogatory on the grounds that it is
3 vague and ambiguous. GMACM objects to this interrogatory on the
4 grounds that it is overly broad and unduly burdensome. GMACM
5 further objects to this interrogatory to the extent that it seeks
6 information protected by the attorney-client privilege. GMACM
7 objects to this interrogatory to the extent it seeks trade secret,
8 private and/or sensitive or confidential information. GMACM objects
9 that this interrogatory is wholly irrelevant to the subject action, not
10 reasonably calculated to lead to the discovery of admissible evidence,
11 harassing, and improper. Plaintiff has alleged a single claim against
12 GMACM in the instant action - for promissory estoppel. The "the date
13 and title of each and every document which constitutes or evidences
14 the assignment and/or transfer of each and every interest in the
15 promissory note and trust deed dated August 25, 2006, executed by
16 Albert A. Passaretti, Jr. as trustor in favor of GreenPoint Mortgage
17 Funding, Inc., as beneficiary, recorded on September 1, 2006 in the
18 Office of the Los Angeles County Recorder as instrument no. 06
19 1954544" is wholly irrelevant to Plaintiff's sole remaining claim.

20 Additionally, it is well settled that Civil Code § 2924 et seq. do
21 not require the person initiating foreclosure to have physical
22 possession of the promissory note which the deed of trust secures.
23 Nor do these sections require the trustee to find out who does
24 physically possess the note. "Under Civil Code section 2924, no party
25 needs to physically possess the promissory note." (*Sicairos vs. NDEX*
26 *West, LLC* (S.D. Cal. 209) 209 WL 385855, at *3; *Saldate v. Wilshire*
27 *Credit Corp.* (E.D. Cal. 2010) 2010 WL 62445, at *14; See, also,
28 *Gamboa v. Trustee Corps*, 2009 WL 656285, at *4 (N.D. Cal. 2009)
(“the statutory framework governing non-judicial foreclosures

1 contains no requirement that the lender produce the original note to
2 initiate the foreclosure process.))

3
4 Passaretti's Factual and Legal Reasons for Compelling
5 GMACM's Further Response.

6 GMAC is defending its refusal to answer the interrogatories by
7 asserting that the court had overruled the complaint and first and
8 second amended complaint and therefore there are no longer any
9 issues dealing with MERS or wrongful foreclosure.

10 As stated above, these interrogatories do not challenge the
11 efficacy of MERS; plaintiff is not challenging MERS compliance with
12 foreclosure law; plaintiff is asserting that there was no transfer of any
13 interest in the note or trust deed to GMAC; the documentation and
14 correspondence with MERS is incidental to GMAC's lack interest in the
15 note.

16 The GreenPoint Mortgage was the beneficiary under the original
17 note and trust deed; there is NOTHING to be found anywhere that
18 shows GMAC is the beneficiary, except the trustee's deed upon sale.
19 There is however, a long history of GMAC's claiming that it was the
20 loan servicing agent and only the loan servicing agent; and, there is
21 indication that the actual holder and beneficiary is a security
22 transaction created/administer by Lehman Brothers. How GMAC
23 removed this note and trust deed from the insolvency court is
24 essential to this present action, and casts light on the authority and
25 validity of the representations made by defendant ETS and GMAC
26 which forms the basis of the within action.

27
28 Passaretti's Special Interrogatory No. 4:

1 State the date and title of each and every document which
2 constitutes or evidences the assignment and/or transfer of each and
3 every interest in the promissory note and trust deed dated August 25,
4 2006, executed by Albert A. Passaretti, Jr. as trustor in favor of
5 GreenPoint Mortgage Funding, Inc., as beneficiary, recorded on
6 September 1, 2006 in the Office of the Los Angeles County Recorder
7 as instrument no. 06 1954544 from GreenPoint Mortgage Funding,
8 Inc., to GMAC Mortgage, LLC.

9
10 Passaretti's Special Interrogatory No. 5:

11 State the date and title of each and every document which
12 constitutes or evidences the assignment and/or transfer of each and
13 every interest in the promissory note and trust deed dated August 25,
14 2006, executed by Albert A. Passaretti, Jr. as trustor in favor of
15 GreenPoint Mortgage Funding, Inc., as beneficiary, recorded on
16 September 1, 2006 in the Office of the Los Angeles County Recorder
17 as instrument no. 06 1954544 from September 1, 2006 to January 1,
18 2011.

19
20 Passaretti's Special Interrogatory No. 6:

21 State the date and nature of each and every assignment and/or
22 transfer of each and every interest the promissory note and trust
23 deed dated August 25, 2006, executed by Albert A. Passaretti, Jr. as
24 trustor in favor of GreenPoint Mortgage Funding, Inc., as beneficiary,
25 recorded on September 1, 2006 in the Office of the Los Angeles
26 County Recorder as instrument no. 06 1954544 from September 1,
27 2006 to January 1, 2011.

28
Passaretti's Special Interrogatory No. 7:

1 State the date and substance of each and every document, or
2 writing, that authorized GMAC, Mortgage LLC to instruct, direct, or
3 order the trustee of the trust deed dated August 25, 2006, executed
4 by Albert A. Passaretti, Jr. as trustor in favor of GreenPoint Mortgage
5 Funding, Inc., as beneficiary, recorded on September 1, 2006 in the
6 Office of the Los Angeles County Recorder as instrument no. 06
7 1954544 to conduct the trustee's foreclosure sale pursuant to the said
8 trust deed.

9
10 Passaretti's Special Interrogatory No. 9:

11 State the date and substance of each and every document or
12 writing, that constitutes or evidences that Executive Trustee Services,
13 LLC dba ETS Services was substituted in as the trustee of the trust
14 deed dated August 25, 2006, executed by Albert A. Passaretti, Jr. as
15 trustor in favor of GreenPoint Mortgage Funding, Inc., as beneficiary,
16 recorded on September 1, 2006 in the Office of the Los Angeles
17 County Recorder as instrument no. 06 1954544.

18
19 Passaretti's Special Interrogatory No. 13:

20 State the date and substance of each and every
21 correspondence, document or writing sent by GMAC Mortgage LLC to
22 Mortgage Electronic Registration Systems, Inc. which in any manner
23 constitutes, evidences, relates to, or refers to the promissory note
24 and the trust deed dated August 25, 2006, executed by Albert A.
25 Passaretti, Jr. as trustor in favor of GreenPoint Mortgage Funding,
26 Inc., as beneficiary, recorded on September 1, 2006 in the Office of
27 the Los Angeles County Recorder as instrument no. 06 1954544.

28
Passaretti's Special Interrogatory No. 14:

1 State the date and substance of each and every
2 correspondence, document or writing sent by Mortgage Electronic
3 Registration Systems, Inc. to GMAC Mortgage LLC which in any
4 manner constitutes, evidences, relates to, or refers to the promissory
5 note and the trust deed dated August 25, 2006, executed by Albert A.
6 Passaretti, Jr. as trustor in favor of GreenPoint Mortgage Funding,
7 Inc., as beneficiary, recorded on September 1, 2006 in the Office of
8 the Los Angeles County Recorder as instrument no. 06 1954544.
9

10 **ISSUES RAISED BY PASSARETTI ON APPEAL TO THE STATE COURT**
11 **OF APPEAL**

12
13 **Judgment and Orders Appealed**
14

15 30. Passaretti-Appellant preserved the Trial Court's rulings on the
16 following Judgment and Orders:

- 17 a) Judgment granting GMACM Motion for Summary Judgment.
18 b) Order sustaining GMACM's evidentiary objection numbers 1, 3, 4,
19 5, 7, 8, 10, 12, and 13 to the Declaration of Appellant.
20 c) Order denying Appellant - Passaretti's Motion for Order Compelling
21 GMACM's Further Response to Special Interrogatories.
22 d) Order denying Passaretti - Appellant's Motion for Order Compelling
23 GMACM's Further Response to Request for Production of Documents.
24 e) Order sustaining GMACM's Demurrer to the first, second, and fifth
25 causes of action of the First Amended Complaint ("FAC") without leave to
26 amend.
27 f) Order sustaining GMACM's Demurrer to the second cause of action
28 of the Second Amended Complaint ("SAC") without leave to amend.

1 **Grounds of Appeal of Judgment and Orders**

2
3 31. The Judgment granting GMACM's Motion for Summary Judgment
4 is appealed on the following grounds:

5 1) Passaretti-Appellant's evidence demonstrated that there is a
6 triable issue of fact with respect to estoppel and reliance.

7 2) Passaretti-Appellant's declaration demonstrated that there is
8 a triable issue of fact regarding the implementation of the permanent or
9 trial loan modification.

10 3) The Trial Court had already decided the motion for summary
11 judgment before argument and denied Passaretti-Appellant's discovery
12 motions before argument.

13 4) The Trial Court weighed the credibility of the evidence to
14 make its determination in ruling on the motion for summary judgment.

15 5) The Trial Court should have allowed a brief continuance of
16 the motion for summary judgment to allow the discovery so that Passaretti
17 - Appellant could obtain evidence that GMACM was not and is not the
18 assignee of the note and trust deed. This is not a question of producing the
19 much touted original note and trust deed. The question here is much more
20 fundamental. Was the note and trust deed actually assigned to GMACM ?
21 If the note and trust deed were not assigned, should the reviewing Court
22 allow GMACM to claim it was the foreclosing beneficiary when in fact it was
23 not ? If there were an assignment why did GMACM never record the
24 assignment ?

25 6) GMACM's motion for summary judgment never stated as a
26 material fact that GMACM was the owner of the note and trust deed, except
27 for the recital in the trustee's deed upon sale which claims that GMACM was
28 the foreclosing beneficiary.

1 32. The Order sustaining GMAC's evidentiary objections numbers 1,
2 3, 4, 5, 7, 8, 10, 12, and 13 to the Declaration of Appellant is appealed
3 on the following grounds:

4 1) Appellant's declaration accurately sets for the substance of
5 the First Cause of Action of the Third Amended Complaint. The declaration
6 is based on personal knowledge and describes facts and events within the
7 observed by Appellant and are admissible into evidence.

8 33. The Order denying Passaretti - Appellant's Motion for Order
9 Compelling GMACM's Further Response to Special Interrogatories is
10 appealed on the following grounds:

11 1) Passaretti - Appellant's discovery was based on then newly
12 acquired information received from a real estate broker that Lehman
13 Brothers was the owner of the note and trust deed. As noted, Passaretti is
14 not and was not questioning the whereabouts of the original, paper, note
15 and trust deed. Passaretti asserts that the note and trust deed were never
16 assigned to GMAC, or if purportedly assigned, the assignment was a fraud
17 on the United States Bankruptcy Court and a fraud on the Lehman Brothers'
18 creditors.²

19
20 ² Footnote No. 2:

21 *Lehman Brothers was in Bankruptcy, it could not transfer its interest in the note and trust deed, any such*
22 *transfer would be a violation of bankruptcy code. The Lehman Brothers bankruptcy was the largest ever*
23 *in the United States. According to Reuters Lehman Brothers has emerged on or about March 1, 2012 from*
24 *bankruptcy in what Reuters called on March 6, 2012 a \$639,000,000,000.00 (six-hundred-and-thirty-nine-*
25 *billion-dollar) restructuring, which calls for a \$65,000,000,000.00, (sixty-five-billion-dollar) distribution*
26 *to creditors who filed \$300,000,000,000.00 (three-hundred-billion-dollars), in claims.*

27 *Lehman Brothers' Chapter 11 Bankruptcy filed in the United States Bankruptcy Court, New*
28 *York District, on September 15, 2008 prevented transfer or assignment of the note and trust deed to GMAC*
and therefore any attempted transfer or assignment of the note and trust deed was illegal and a fraud on

1 The Trial Court was doubtful about Appellant's challenge MERS
2 probably based on the legislature's failure to rectify the banks' unilateral
3 creation of MERS to disregard well established requirements of recording
4 real estate transactions.

5 34. This is not an issue raised by *Ferguson v. Avelo Mortg. LLC*, 195
6 Ca. Ap. 4th, 1618 (2d Dist. 2011, as modified (June 20, 2011)). It is not a
7 question of whether MERS held the original note but was the note ever
8 assigned to GMACM, as GMACM claims it was ? The fact is there was no
9 assignment, MERS did not even take the time or the trouble to bother with
10 an assignment. There was no assignment by MERS or anyone else.

11 35. The Order denying Passaretti's Motion for Order Compelling
12 GMACM's Further Response to Request for Production of Documents is
13 appealed on the following grounds: Passaretti - Appellant relies on the
14 same grounds set forth immediately above under the sub-heading of
15 Appellant's Motion to Compel GMAC's Further Response to Special
16 Interrogatories.

17 36. The Order sustaining GMAC's Demurrer to the first, second, and
18 fifth causes of action of the First Amended Complaint ("FAC") without leave
19 to amend is appealed on the following grounds:

20
21 *the United States Bankruptcy Court and a fraud on the Lehman Brothers Bankruptcy creditors. If GMAC*
22 *was not the assignee then it is impossible for the trustee's foreclosure sale to have been properly conducted.*

23 *Would this Court of Appeal affirm the judgment knowing that there was no assignment of*
24 *the note and trust deed to GMAC, knowing that GMAC was not the assignee of the note and trust deed ?*
25 *Would this Court of Appeal affirm the judgment knowing that there was an improper transfer or purported*
26 *transfer from the United States Bankruptcy Court to GMAC in violation of the United States Code and a*
27 *fraud on creditors ? Appellant should have an opportunity to present the evidence of improper transfer and*
28 *fraud on Lehman Brothers' creditors to the Trial Court and let the Trial Court decide ? [end foot note no.*

2]

1 1) As to the fifth cause of action for Violation of MERS, GMAC's
2 failure to record the purported assignment of the promissory note and trust
3 deed is a breach of the contractual terms of the trust deed or a violation of
4 statute, regardless of the name of the cause of action. GMAC offered a
5 complete recorded history of the ownership of the note and trust deed for
6 Judicial Notice which the Trial Court granted. There was no assignment.

7 2) Passaretti - Appellant's allegation that GMAC failed to record
8 the assignment of the note and trust deed transferring the loan to GMAC
9 carries the inference that the note and trust deed were in fact not assigned.

10 3) The Trustee's Deed Upon Sale is GMAC's fraudulent
11 representation that GMAC was the foreclosing beneficiary and the assignee
12 of the note and trust deed, and had a right to credit bid on its own behalf at
13 the private foreclosure sale, a sale that was conducted by the wholly owned
14 subsidiary of GMAC.

15 5) Whether the Second Cause of Action of the First Amended
16 Complaint is labeled 'breach of contract' or 'violation of statute' the
17 allegations state a cause of action for recovery of the property.

18 6) The second cause of action states a cause of action for
19 violation of public policy. The Trial Court took a limited view of the
20 application of Public Policy. The Trial Court ruled that the only thing Public
21 Policy does is to make a contract void and further ruled that since the
22 second cause of action alleged breach of the contract, that was alleged to
23 be the violation of Public Policy there no cause of action. Public Policy is a
24 much broader concept than allowed by the Trial Court. It was GMAC's
25 failure to comply with Public Policy, and GMAC's refusal to comply with the
26 mandate of Public Policy that established the second cause of action.

1 37. The Order sustaining GMACM's Demurrer to the second cause of
2 action of the Second Amended Complaint ("SAC") without leave to amend is
3 appealed on the following grounds:

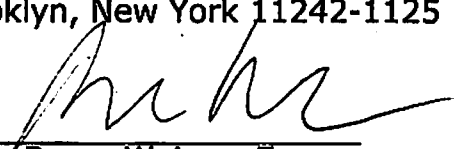
4 1) The sufficiency of the Second Cause of Action for violation of
5 Business and Professions Code 17200 is dependent on the decision of this
6 court with respect to the other causes of action, and is dependent on the
7 result of this appeal.

8 **CONCLUSION**

9 **WHEREFORE**, Based on the foregoing, it is respectfully requested
10 that this Bankruptcy Court overrule Debtors' Objections to Passaretti's
11 Claim and Order Debtors' to provide further response to Requests for
12 Production of Documents and Special Interrogatories.

13
14 Dated: October 22, 2013

15 Rosenberg, Musso & Weiner
16 26 Court Street, Suite 2211
17 Brooklyn, New York 11242-1125

18 By: 
19 Bruce Weiner, Esq.
20 Attorney for Creditor Albert Passaretti
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